REMARKS / ARGUMENTS

1. Retraction of Previous Arguments

In light of *Hakim v. Canon Avent Group PLC*, 479 F.3d 313, 81 U.S.P.Q.2d (BNA) 1900 (Fed. Cir. 2007), Assignee retracts and expressly disavows all arguments made in all related pending and expired applications.

2. Response to 09/25/2007 Non-Final Office Action

For the convenience of the Examiner and clarity of purpose, Assignee has reprinted the substance of the Office Action in ***10-point bolded and italicized font***. Assignee's arguments immediately follow in regular font.

Elections/Restrictions

> ***Claims 8-12 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Please note, Assignee should cancel these claims in response to this Office Action in order to speed up prosecution.***

Claims 8 – 12 have been canceled without prejudice.

> ***Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Olsen (US 5,254,878). The reference discloses a multiple of batteries 14 connected in parallel wherein each battery is measured and a controller is automatically select the battery with a highest output voltage. With such an arrangement, each subsequent battery is regulated to match the highest voltage. The reference however does not disclose the multiple batteries being devices and/or the measured signal being current. It would have been obvious to one having ordinary skill in the art to have substituted the battery and the voltage measure with the "devices" and current measure since it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations.***

Assignee respectfully traverses the rejection of claim 1 over Olsen. First, Assignee cannot agree with the Office's characterization of what Olson (US 5,254,878) discloses and teaches. Olsen is directed to a "voltage regulated power supply," such as might be used for bench top testing of components or devices. Olsen teaches that (Abstract)

> The voltage regulator has a voltage source for providing a plurality of successively increasing voltage levels at a correspondingly plurality of output terminals or taps. A controller is provided for automatically selecting, in response to an electrical control signal, the one of the taps providing a voltage level above the predetermined output voltage level.

More specifically,

- Olsen discloses that its batteries are connected in ***series*** and not in parallel as argued by the Office. See Olsen at Col. 4, lines 43-46. Indeed, the only time that the word "parallel" is used in Olsen is to describe the connection of the shunt pass element in a shunt regulator ("In the shunt regulator, a shunt "pass" element is connected across, or in ***parallel*** with, the voltage source which has a finite output impedance.").

- Olsen teaches that its controller selects the tap from the series-connected batteries with a voltage higher than but closest to the desired output voltage. Assignee has searched Olsen in vain for support for the Office's conclusion that the "***controller [] automatically select[s] the battery with a highest output voltage.***" In the event this rejection is continued, Assignee respectfully requests that the Office support this conclusion with specific citations to Olsen.

- Assignee can find absolutely no support in Olsen for the Office's conclusion that "***with such an arrangement, each subsequent battery is regulated to match the highest***

voltage." In fact, if Olsen functioned in such manner all batteries would have a common voltage and Olsen's stated purpose of selecting the one tap (out of the series of taps) with a voltage greater than, but closest to, the desired output voltage would be defeated. Olsen would function only as a single voltage, voltage regulator. Again, in the event this rejection is continued, Assignee respectfully requests that the Office support this conclusion with specific citations to Olsen

Second, and despite these gross deficiencies in the disclosure of Olsen, even if it were proper to equate each of Olsen's batteries to a "device" and Olsen's battery voltage to "an output current," it is clear that Olsen does not disclose or teach the subject matter of claim 1. Among other things, there is no teaching in Olsen that 1) the voltage of each battery is compared is compared with the highest battery voltage; or 2) the voltage of each battery is adjusted to match the highest battery voltage." As stated above, if Olsen functioned as required by claim 1, Olsen would not be able to achieve its stated purpose. Olsen does not teach a person of ordinary skill to practice the invention of claim 1. Assignee respectfully submits that claim 1 is patentable over Olsen. Reconsideration and withdrawal of this rejection is respectfully requested.

> ***Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Harrison et al. (US 6,487,356) in view of Kouzu et al. (US 6,111,387). Reference '356 discloses a storage rack with a plurality of slots for holding a plurality of modules wherein the modules can be placed anywhere in the slots (see figure 4). However it does not teach the modules being batteries for a backup UPS system. Reference '387 teaches a plurality of batteries is placed in slots within a storage or rack 10. These batteries are interchangeable in their appropriate position. It would have been obvious to have made battery rack into a full scale as taught in both references since it is a matter of obvious design choice to merely change the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1 955).***

Assignee respectfully traverses this rejection of claim 6. Neither Harrison nor Kouzo are

directed to a modular UPS. Even if one or both of these references disclose some level of modularity of electrical components or a frame for electrical components, the combination of these references ***does not*** disclose or teach, among other things, a power module having at least one battery module and comprising a "microprocessor based controller for monitoring and controlling the battery module component." Thus, the mere combination of Harrision and Kouzo does not render claim 6 and unpatentable, and what is missing from the combination would not have been obvious to a person of ordinary skill. The Office has not made out a *prima facie* case of unpatentabilty. Assignee submits claim 6 is patentable over Harrison and Kuozo. Reconsideration and withdrawal of this rejection is respectfully requested.

> ***Claim 5 is rejected under 35 U.S.C. 101 because it falls into a category of judicial exception. Merely adding, dividing and adjusting would not appear to be sufficient to constitute a tangible result since the outcome of these steps has not been used in a disclosed practical application nor made available in such a manner that its usefulness in a disclosed practical application can be realized.***

Assignee respectfully traverses the rejection. Assignee submits that a person of skill would understand that claim 5 achieves the tangible result of a plurality of parallel-connected AC devices having substantially the same output power. However, to make this tangible result more plain, Assignee has chosen to amend claim 5, as shown above, to recite:

measuring an output power level of each device;

adding the output power levels for each device to arrive at a total output power;

dividing the total output power by the number of devices to derive an output power setpoint; and

adjusting the output power of each device to match the output power setpoint **so that the plurality of devices have substantially the same output power**.

Assignee respectfully submits that claim 5, both before and after amendment, is patentable. Reconsideration and withdrawal of this rejection is respectfully requested.

Allowable Subject Matter

Claims 2 and 7 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Assignee thanks the Examiner for his effort on this file and the favorable consideration given to claims 2 and 7. Assignee would note that claim 2 is already in independent form. In light of the arguments presented above, Assignee has chosen to maintain claims 7 its present form.

Claims 3 and 4 are allowed.

Assignee thanks the Examiner for his effort on this file and the recognition of patentability given to claims 3 and 4.

3. Other Amendments

For reasons unrelated to any claim rejection presented in the Office Action, Assignee has chosen to amend claim 6 to more particularly point and distinctly claim certain aspects of the disclosed invention. These amendments may or may not be narrowing in scope and are not being made for patentability reasons.

4. New Claims

Assignee has presented new claims 13 and 14, which depend from claim 1, and claims 15 – 18, which depend from claim 2.

Assignee has also presented new independent claim 19, which corresponds substantially, but not identically, to allowable claim 7.

5. Conclusion

Assignee thanks the Examiner for his consideration of and effort on this file. Assignee submits that all pending claims are in condition for allowance.

If there are any questions or if additional information is needed, the Examiner is invited to telephone or email the undersigned.

Respectfully submitted,

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